

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EMMANUEL G. JUSTINIANO, JOSE NIEVES,
JOSE BARBOSA, DAHEED WILLIS, ANTHONY
KEITT, FRANK FODERA, JOSHUA MOSS,
OSCAR PUERTA, LUIS ARENAZA,
GUILLERMO MUÑOZ, MILTON LAVERDE,
WILLIE S. BREWER, ISMAEL FRANCISCO,
STEVE M. NG, MANUEL SANTOS, JULIO
RIVERA, FREDDY VELEZ, BRYONT A LOPEZ,
MIGUEL CABREJA, JUAN VEVAS, TERRENCE
JONES, NICOLAS SALGADO, LUIS A. VEGA,
LOUIS TELESE, KENNETH WARING, ANTONY
G. HILL, JOSE GOMEZ ROSARIO, RODERICK
MASHALL, JOSE BLANCO, DAVID BAEZ,
KENYA EARLY, SAMMY HERNANDEZ,
NELSON MINYETY, BILL DELVIN, EDWIN J.
RAMIREZ CESPEDES, BENTO RODRIGUEZ,
PAUL STARAPOLA, ANDRES REYES, JESUS A.
MARTINEZ, DAVID BEACH, JONATHAN
DELROSARIO, JAMES SHAW, GARFIELD
GAMMON, DESEAN ALLEN, DERREK
HUGHES, JORGE A. MILANES, and CARMELO
NYANDUGAR, *each individually and on behalf of*
all other individuals similarly situated,

Plaintiffs,

v.

PHOENIX BEVERAGES, INC., WINDMILL
DISTRIBUTING COMPANY LP, d/b/a
PHOENIX/BEEHIVE, RODB, LLC, LONGFENG
TRUCKING, LLC, PHOENIX BEVERAGES MTO,
LLC, FORBEE CAPITAL KEG FUND, LLC,
HEINEKEN NORTH AMERICA, INC.,
HEINEKEN USA INCORPORATED, RODNEY
BREYMAN, GREGORY BREYMAN, PAUL
ROSSI, JOSEPH STANICH, and GEORGE
STRADA,

Defendants.

Case No. 13-CV-2332 (TLS) (JLC)

**NOTICE OF MOTION TO
DISMISS PLAINTIFFS'
AMENDED COMPLAINT**

PLEASE TAKE NOTICE that upon the Declaration of Rodney Brayman executed on May 30, 2013 and exhibits annexed thereto, the Declaration of Robert E. Crotty, Esq. executed on May 30, 2013 and exhibits annexed thereto, and the Memorandum of Law in support of Defendants' Motion to Dismiss Plaintiffs' Amended Complaint submitted herewith, Defendants Windmill Distributing Company, LP, d/b/a Phoenix/Beehive, Phoenix Beverages, Inc., RODB, LLC, Longfeng Trucking, LLC, Phoenix Beverages MTO, LLC, Forbee Capital Keg Fund, LLC, Heineken USA Incorporated, Rodney Brayman, Gregory Brayman,¹ Paul Rossi, Joseph Stanich, and George Strada (collectively "Phoenix" or "Defendants") will move this Court at a date and time to be determined by the Court, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, for an Order dismissing the Amended Complaint pursuant to Rule 12(b)(6) and, alternatively Rule 12(d) of the Federal Rules of Civil Procedure, and for such other and further relief as the Court may deem proper.

¹ Brayman is incorrectly spelled in the case caption as "Breyman."

PLEASE TAKE FURTHER NOTICE that this action has been assigned to the S.D.N.Y. Pilot Project for Complex Civil Cases and, therefore, the Individual Practice Rule 2(b)(ii) certification is not required. Nevertheless, Defendants state that, as set forth in the Declaration of Robert E. Crotty, Esq. executed on May 30, 2013 and exhibits annexed thereto, submitted herewith, Defendants communicated with Plaintiffs' counsel in an effort to resolve the matter without motion practice.

Dated: New York, New York
May 30, 2013

KELLEY DRYE & WARREN LLP

By

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